

# **EXHIBIT 3**

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SUPERIOR COURT  
COUNTY OF SAN FRANCISCO

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CASE MANAGEMENT CONFERENCE SET

**PARAM NATT**  
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MAY 26 2006 - 9 00 AM

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CITY OF MODESTO and CITY OF  
MODESTO SEWER DISTRICT NO. 1

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CITY OF MODESTO and CITY OF  
MODESTO SEWER DISTRICT NO. 1,

Plaintiffs,

v.

THE DOW CHEMICAL COMPANY;  
M.B.L., INC.; R.R. STREET & CO., INC.;  
VULCAN MATERIALS COMPANY;  
PPG INDUSTRIES, INC.; OCCIDENTAL  
CHEMICAL CORPORATION; HOYT  
CORPORATION; and DOES 1 through  
750, inclusive,

Defendants.

Case No.

**CGC · 05 447952**

COMPLAINT FOR: (1) INDEMNITY;  
(2) STRICT LIABILITY;  
(3) CONTINUING TRESPASS; AND  
(4) CONTINUING NUISANCE

**FAXED**

1 Plaintiffs allege that at all relevant times:

2 I. THE PARTIES

3 A. The Plaintiffs

4 1. Plaintiff City of Modesto ("Modesto") is a public and municipal entity located  
5 in Stanislaus County, California. Modesto is a charter city. Modesto owns, operates,  
6 maintains, supervises, and/or controls the sewer and water system, including, but not limited  
7 to, all wells, sewers, pipes, connectors, transmission facilities, sewage and water purification  
8 facilities, related and associated equipment, appurtenances, real property and easements,  
9 facilities, soil, and groundwater ("sewer and water system").

10 2. Plaintiff City of Modesto Sewer District No. 1 ("Sewer District") is a public  
11 agency which also jointly owns, operates, maintains, supervises, and/or controls the sewer  
12 system. Modesto and the Sewer District will be collectively referred to as "plaintiffs."

13 3. Plaintiffs commenced a lawsuit in the Superior Court of the State of California  
14 in and for the County of San Francisco styled City of Modesto, et al., v. The Dow Chemical  
15 Company, et al., No. 999643 ("Modesto Lawsuit"), alleging that their sewer and water system  
16 is contaminated with toxic chlorinated solvents as a direct result of defendants' negligent  
17 conduct in manufacturing, distributing, using, controlling, and disposing of chlorinated  
18 solvents, and the equipment designed to use chlorinated solvents, which caused chlorinated  
19 solvents to contaminate plaintiffs' sewer and water system. Also in the Modesto Lawsuit,  
20 plaintiffs (as cross-defendants) commenced a cross-complaint against McHenry-Modesto, a  
21 California limited partnership; Briggsmore Corp., a California corporation, general partner of  
22 McHenry-Modesto; McHenry Village, a California limited partnership; Samuel Freshman;  
23 Ardyth Freshman; and Irene Tritel (collectively referred to as "McHenry Modesto").

24 4. McHenry Modesto commenced a lawsuit in the Superior Court of the State of  
25 California in and for the County of Stanislaus, styled McHenry Modesto v. Chao, et al., No.  
26 270538 ("McHenry Modesto Lawsuit"), asserting claims relating to soil, groundwater, and  
27 sewer contamination caused by toxic chlorinated solvents at and surrounding the McHenry  
28 Village Shopping Center at 1700 McHenry Avenue, Modesto, California.

1           5.       In November 2004, plaintiffs entered into an agreement with McHenry Modesto  
2 ("Agreement") whereby McHenry Modesto assigned to plaintiffs, without limitation, all  
3 claims, rights, and causes of action that McHenry Modesto has asserted or could assert with  
4 respect to perchloroethylene ("PERC") and/or its byproducts.

5           6.       On October 5, 2004, the San Francisco Superior Court entered its Order  
6 Determining Good Faith Settlement, finding that the Agreement and settlement reached  
7 between McHenry Modesto and plaintiffs was made in good faith within the meaning of Code  
8 of Civil Procedure section 877.6. The Order Determining Good Faith Settlement provides that  
9 the non-settling defendants and cross-defendants in the Modesto Litigation shall collectively  
10 (not each) have one single, total setoff in the Modesto Litigation for the site at 1700 McHenry  
11 Avenue, Modesto, California, of \$652,500. Pursuant to subdivision (c) of section 877.6, the  
12 good faith settlement determination bars any other tortfeasor or co-obligor from any further  
13 claims against McHenry Modesto for equitable comparative contribution, or partial or  
14 comparative indemnity, based on comparative negligence or comparative fault. No party  
15 followed the procedure in subdivision (e) of section 877.6 to petition for review of the  
16 Superior Court's determination that the settlement was made in good faith; accordingly, the  
17 good faith determination has become final.

18           7.       McHenry Modesto is one of several entities responding to a Clean-up and  
19 Abatement Order ("CAO") issued by the Central Valley Regional Water Quality Control  
20 Board. The CAO requires clean-up of PERC contamination at and surrounding 1700 McHenry  
21 Avenue, Modesto, California, to background levels (0.06 ppb in groundwater).

22           8.       McHenry Modesto and others responded to the CAO and have incurred and are  
23 continuing to incur response costs, including costs of investigation and remediation. McHenry  
24 Modesto has expended in excess of \$1,000,000 to investigate and remediate contamination at  
25 and surrounding 1700 McHenry Avenue, Modesto, California. The costs of remediation will  
26 likely exceed several million dollars.

1           9.       Plaintiffs moved to amend their complaint in the Modesto Litigation to allege  
2 the claims assigned by McHenry Modesto to plaintiffs, but the San Francisco Superior Court  
3 denied the motion to amend by an order filed September 9, 2005.

4           B.       The Chlorinated Solvent Manufacturer Defendants

5           10       Defendant The Dow Chemical Company ("Dow") is a Delaware corporation  
6 with its principal place of business in Midland, Michigan.

7           11       Defendant PPG Industries, Inc. ("PPG"), is a Pennsylvania corporation with its  
8 principal place of business in Pittsburgh, Pennsylvania.

9           12.       Defendant Vulcan Materials Company ("Vulcan") is a New Jersey corporation  
10 with its principal place of business in Homewood, Alabama.

11           13.       Defendant Occidental Chemical Corporation ("Occidental") is a Louisiana  
12 corporation with its principal place of business in Dallas, Texas.

13           14.       Plaintiffs are ignorant of the true names and/or capacities of the defendants sued  
14 under the fictitious names of DOES 1 through 250, inclusive.

15           15.       Defendants Dow, PPG, Vulcan, Occidental, and DOES 1 through 125, and each  
16 of them: (1) manufactured, distributed, transported, packaged, sold and/or disposed of toxic  
17 chlorinated solvents called PERC (PERC and its degradation products and ingredients are  
18 referred to collectively as "chlorinated solvents") in the State of California and/or were  
19 involved in the manufacture of equipment sold in the State of California specifically designed  
20 to store, use, process, and dispose of chlorinated solvents; (2) Dow, PPG, Vulcan, Occidental,  
21 and DOES 1 through 250, and each of them, were legally responsible for and committed each  
22 of the tortious and wrongful acts alleged in this Complaint; and (3) in doing the tortious and  
23 wrongful acts alleged in the Complaint, acted in the capacity of co-conspirator, aider, abettor,  
24 joint venturer, partner, agent, alter ego, principal, successor-in-interest, surviving corporation,  
25 fraudulent transferee, fraudulent transferor, controller, alter ego, licensee, licensor, patent  
26 holder and/or indemnitor of each of the remaining DOE and named defendants.

1        16. Each of the defendants named in paragraphs 10 through 15 above, and DOE  
2 defendants 1 through 250, will be collectively referred to as the "manufacturer defendants" or  
3 "manufacturers."

4        C.     **Distributor Defendants**

5        17. Defendant M.B.L., Inc. ("MBL"), is a California corporation with its principal  
6 place of business in Santa Clara, California.

7        18. Defendant R.R. Street & Co. ("Street") is a Delaware corporation with its  
8 principal place of business in Naperville, Illinois.

9        19. Plaintiffs are ignorant of the true names and/or capacities of the defendants sued  
10 herein under the fictitious names of DOES 251 through 500, inclusive.

11        20. MBL, Street, and DOES 251 through 500 ("distributor defendants"), and each  
12 of them: (1) purchased chlorinated solvents from one or more of the manufacturer defendants,  
13 and then resold the chlorinated solvents in the State of California to Modesto dry cleaners,  
14 including the Ideal Cleaners located at and adjacent to 1700 McHenry Avenue, Modesto,  
15 California; (2) distributed, designed, assembled, maintained, controlled, operated, and/or  
16 repaired equipment parts, replacement parts, and appurtenances, including, but not limited to,  
17 dry cleaning equipment in the State of California specifically designed for the use, application,  
18 and disposal of chlorinated solvents by Modesto dry cleaners, including the Ideal Cleaners  
19 located at and adjacent to 1700 McHenry Avenue, Modesto, California; (3) would engage in  
20 service visits and inspections on the premises of Modesto dry cleaners, including the Ideal  
21 Cleaners located at and adjacent to 1700 McHenry Avenue, Modesto, California, for the  
22 purposes of promoting their dry cleaning solvents and dry cleaning equipment products and  
23 testing and inspecting Modesto dry cleaner equipment, which included witnessing dry  
24 cleaners' disposal of chlorinated solvents; (4) were legally responsible for and committed each  
25 of the tortious and wrongful acts alleged in this Complaint; and (5) in doing the tortious and  
26 wrongful acts alleged in the Complaint, acted in the capacity of co-conspirator, aider, abettor,  
27 joint venturer, partner, agent, principal, successor-in-interest, surviving corporation, fraudulent  
28

1 transferee, fraudulent transferor, controller, alter ego, licensee, licensor, patent holder, and/or  
2 indemnitor of each of the remaining DOE and named defendants.

3 21. In addition to engaging in the distributor activities more fully described in  
4 paragraph 20 above, Street and DOES 400 through 500 also engaged in the manufacturing acts  
5 and activities fully described in paragraph 15 above, which is incorporated in full herein.

6 **D. Chlorinated Solvent Equipment Manufacturers**

7 22. Defendant Hoyt Corporation is a Massachusetts corporation with its principal  
8 place of business in Westport, Massachusetts.

9 23. Plaintiffs are ignorant of the true names and/or capacities of the defendants sued  
10 herein under the fictitious names of DOES 501 through 750, inclusive ("chlorinated solvent  
11 equipment manufacturers").

12 24. Defendant Hoyt Corporation and DOES 501 through 750, and each of them:  
13 (1) manufactured, distributed, designed, assembled, maintained, supervised, controlled, sold,  
14 operated, and/or repaired equipment, parts, and appurtenances, including, but not limited to,  
15 dry cleaning equipment, in the State of California specifically designed for the storage,  
16 application, and disposal of chlorinated solvents by Modesto dry cleaners, including the Ideal  
17 Cleaners located at and adjacent to 1700 McHenry Avenue, Modesto, California, that have  
18 contributed to the alleged contamination ("chlorinated solvent equipment"); (2) were legally  
19 responsible for and committed each of the tortious and wrongful acts alleged in this complaint;  
20 and (3) in doing the tortious and wrongful acts alleged in the complaint, acted in the capacity  
21 of co-conspirator, aider, abettor, joint venturer, partner, agent, principal, successor-in-interest,  
22 surviving corporation, fraudulent transferee, fraudulent transferor, controller, alter ego,  
23 licensee, licensor, patent holder, and/or indemnitor of each of the remaining DOE and named  
24 defendants.

25 **II. BACKGROUND OF CHLORINATED SOLVENTS**

26 25. PERC is a toxic organic compound. PERC has been used as a cleaning solvent.  
27 Dry cleaning machines were designed and developed to use PERC. PERC was the most  
28 widely used dry cleaning chemical in the United States. PERC is also referred to as PCE,



1 carbon dichloride, and 1,1,2,2-tetrachloroethylene. In soil, PERC can be transformed by  
2 biological degradation and by reductive dehalogenation into trichloroethylene ("TCE"), vinyl  
3 chloride, and trichloromethane ("TCA").

4       26       In or about the 1940's, the defendants knew, or should have known, that PERC  
5 could be absorbed in the lungs, skin, and gastrointestinal tract which could cause severe  
6 damage to the liver, kidneys, and central nervous system and other toxic effects. PERC is a  
7 known carcinogen which causes genetic damage. The defendants also knew, or should have  
8 known, that PERC and its degradation products and ingredients create a substantial risk of  
9 harm to groundwater and soil.

10       27.       Notwithstanding their knowledge of health and environmental hazards of  
11 chlorinated solvents, the manufacturing defendants, chlorinated solvent equipment defendants,  
12 and distributor defendants designed, manufactured, marketed, and/or supplied chlorinated  
13 solvents and/or chlorinated solvent dry cleaning equipment and/or replacement parts to retail  
14 dry cleaners, including the Ideal Cleaners located at and adjacent to 1700 McHenry Avenue,  
15 Modesto, California. The equipment was specifically designed to store, use, process, and  
16 dispose of chlorinated solvents. Defendants were aware of the typical use, waste, and disposal  
17 practices resulting from the intended use of their equipment, including the customary practice  
18 of dumping chlorinated solvent wastewater and muck into the public sewer systems, and the  
19 habitual problem with multiple leaks of chlorinated solvents into the environment during the  
20 foreseeable and expected use of chlorinated solvent equipment.

21       28.       Notwithstanding the fact that the manufacturer defendants, the chlorinated  
22 solvent equipment defendants, and the distributor defendants knew, or should have known, of  
23 the serious health hazards caused by the use and disposal of chlorinated solvents and that  
24 chlorinated solvents pass through sewer pipes and concrete floors, thereby contaminating soil  
25 and migrating into groundwater, defendants negligently and carelessly: (1) issued instructions  
26 that chlorinated solvents could be discharged into the sewers, permitting chlorinated solvents  
27 to contaminate the sewer system and surrounding property; and/or (2) designed and operated  
28 dry cleaning machines, appurtenances, and other types of machinery designed to be used with



1 chlorinated solvents to facilitate and promote the disposal of chlorinated solvents into the  
2 sewer system and/or which failed to adequately prevent and/or minimize the loss of chlorinated  
3 solvents; and/or (3) failed to recall and/or warn the users of the negligently designed  
4 chlorinated solvent equipment of the dangers of groundwater contamination as a result of  
5 chlorinated solvents disposal in the sewer system; and/or (4) further failed and refused to issue  
6 the appropriate warnings and/or recalls to the users of chlorinated solvents regarding the proper  
7 means of use and disposal of this toxic chemical, notwithstanding the fact that the respective  
8 defendant knew the identity of the purchaser of the chlorinated solvent equipment and/or  
9 chlorinated solvents.

10 29. In addition, the manufacturer defendants and distributor defendants, and each of  
11 them: (a) knew, or should have known, that dry cleaners, including the Ideal Cleaners located  
12 at and adjacent to 1700 McHenry Avenue, Modesto, California, were foreseeable users of  
13 chlorinated solvents and were using the chlorinated solvents in a foreseeable manner; (b)  
14 knew, or should have known, that the chlorinated solvents were dangerous to the environment  
15 or health if deposited directly on the ground, drained or flushed into the sewer system, or by  
16 permeating unprotected concrete floors under dry cleaning equipment; (c) knew, or should  
17 have known, that Modesto dry cleaners, including the Ideal Cleaners located at and adjacent to  
18 1700 McHenry Avenue, Modesto, California, foreseeably lacked knowledge of these dangers;  
19 (d) failed to warn the Modesto dry cleaners, including the Ideal Cleaners located at and  
20 adjacent to 1700 McHenry Avenue, Modesto, California, of the dangers and/or affirmatively  
21 instructed them to engage in such dangerous conduct; and (e) as a result, contamination  
22 occurred at Modesto dry cleaners, including the Ideal Cleaners located at and adjacent to 1700  
23 McHenry Avenue, Modesto, California.

24 30. In addition, notwithstanding the manufacturing defendants' and distributor  
25 defendants' knowledge of the severe environmental and health dangers and hazards posed by  
26 the use and disposal of chlorinated solvents on the ground and in sewers, these defendants: (1)  
27 instructed, directed, and recommended Modesto dry cleaners, including the Ideal Cleaners  
28 located at and adjacent to 1700 McHenry Avenue, Modesto, California, to dispose of

1 chlorinated solvents onto the ground and into the sewers; (2) instructed, directed, and  
2 recommended Modesto dry cleaners, including the Ideal Cleaners located at and adjacent to  
3 1700 McHenry Avenue, Modesto, California, to maintain, operate, design, and construct the  
4 dry cleaning equipment to drain chlorinated solvents into the sewer systems and/or operate and  
5 maintain the dry cleaning equipment by means of physically disposing chlorinated solvent  
6 waste as part of the operation of the dry cleaning equipment into the sewers or soil which  
7 caused substantial and serious harm to the property of others, including the property located at  
8 and surrounding 1700 McHenry Avenue.

9 31. Chlorinated solvent products are fungible. The manufacturer and distributor  
10 defendants concluded that it was not enough to simply sell chlorinated solvents to dry cleaners  
11 in order to remain competitive. In order to compete for larger shares of the chlorinated solvent  
12 market, the manufacturer and distributor defendants, and each of them, would routinely and  
13 frequently advise, instruct, assist, recommend and/or participate in the operation, maintenance,  
14 inspection, and/or testing of dry cleaners, including the Ideal Cleaners located at and adjacent  
15 to 1700 McHenry Avenue, Modesto, California, in order to promote the purchase of their  
16 chlorinated solvent products and in order to create brand loyalty. These activities included  
17 personal visits by manufacturer and distributor representatives to Modesto dry cleaners and  
18 written directions, instructions, and brochures on dry cleaning equipment maintenance and  
19 operations. Each of the manufacturer and distributor defendants routinely engaged in these  
20 same and similar practices. As part of these activities and practices, the manufacturer and  
21 distributor defendants, and each of them, instructed, directed, and/or recommended to Modesto  
22 dry cleaners, including the Ideal Cleaners located at and adjacent to 1700 McHenry Avenue,  
23 Modesto, California, to dispose of chlorinated solvents on the ground or in the drain, including  
24 using the sewer system and dumping solvents on the ground as a method of disposal.

25 32. In order to compete with other PERC manufacturers and distributors, authorized  
26 representatives became personally involved in the dry cleaning business of its customers  
27 through regular and frequent personal calls to the dry cleaners, by providing written materials  
28 regarding the promotion, operation, and maintenance of dry cleaning equipment, and by

1 supplying items to dry cleaners. Each of the solvent manufacturers and distributors routinely  
2 and frequently sent personal representatives to the premises of Modesto dry cleaners, including  
3 the Ideal Cleaners located at and adjacent to 1700 McHenry Avenue, Modesto, California, and,  
4 among other things: (1) regularly observing the dry cleaning operations and practices,  
5 including disposal methods, of Modesto dry cleaners; (2) issuing brochures, newsletters, and  
6 written and/or verbal directions and/or instructions for the operation, maintenance, and use of  
7 dry cleaning equipment and/or dry cleaning solvents; (3) testing perchloroethylene at the dry  
8 cleaners; (4) unloading and storing perchloroethylene at the Modesto dry cleaners; and (5)  
9 entering into exclusive distribution agreements between the manufacturer and distributor  
10 defendants which required the distributors to act as representatives of the respective  
11 manufacturers in doing these alleged acts.

12 33. Examples of these practices include, but are not limited to, the following:

13 (a) Dow advised, recommended and/or instructed dry cleaners to operate  
14 and maintain their dry cleaning equipment to discharge separator wastewater which contained  
15 chlorinated solvent contamination in such a manner to maximize a "free unimpeded water flow  
16 to the drain . . . ."

17 (b) Defendant Dow instructed dry cleaners that "small amounts [of  
18 chlorinated solvents] may be transported to an area where it can be placed on the ground . . . ."

19 (c) In a 1991 internal Vulcan and R.R. Street memorandum entitled "PERC  
20 Removal from Water Saturated With PERC Study," R.R. Street/Vulcan concludes that  
21 significant amounts of PERC remain in wastewater generated by the dry cleaning process  
22 which was deposited into sewers.

23 (d) Defendant R.R. Street instructed dry cleaners that "[t]he residue from  
24 distillations of perchloroethylene may be poured on dry sand, earth, or ashes . . . ."

25 (e) Defendant MBL, Inc. agreed to "disseminate to all customers" Dow  
26 publications regarding the handling of Dow perchloroethylene.  
27  
28

1 (f) Defendant R.R. Street provided instructions for building a device for the  
2 purpose of detecting PERC escaping with the water from a water separator entitled "Are You  
3 Losing PERC Down the Drain?"

4 (g) PPG Industries instructed dry cleaners to dispose perchloroethylene "to  
5 a sanitary sewer or bury in chemical landfill."

6 (h) The manufacturer defendants were members of various trade groups  
7 including the Manufacturing Chemists Association, Inc., which prepared written instructions  
8 which the manufacturing defendants and distributor defendants supplied to Modesto dry  
9 cleaners which instruct that "small amounts [of chlorinated solvents] . . . can be placed on the  
10 ground."

11 (i) In addition: (1) the manufacturer defendants and distributor defendants  
12 of chlorinated solvents provided direct technical advice and service to Modesto dry cleaners,  
13 including the Ideal Cleaners located at and adjacent to 1700 McHenry Avenue, Modesto,  
14 California, relating to waste disposal in which the manufacturer defendants and distributor  
15 defendants advised the dry cleaners to dispose of chlorinated solvents containing waste and  
16 separator water into the sewer or on the ground; (2) Modesto dry cleaners, including the Ideal  
17 Cleaners located at and adjacent to 1700 McHenry Avenue, Modesto, California, relied upon  
18 the advice of the manufacturer defendants and distributor defendants with regard to the  
19 operation of their facility and with regard to the disposal advice and service; (3) employees  
20 and agents of the manufacturer defendants and distributor defendants of chlorinated solvents  
21 had access to the facilities of Modesto dry cleaners, including the Ideal Cleaners located at and  
22 adjacent to 1700 McHenry Avenue, Modesto, California; and (4) employees and agents of the  
23 manufacturer defendants and distributor defendants of chlorinated solvents performed tests on  
24 chlorinated solvents containing wastes, and that process resulted in the release of chlorinated  
25 solvents into the sewer and the environment causing the damage alleged herein.

26 (j) The manufacturer defendants set up, staffed, and directly controlled  
27 various trade associations and distributor defendants for the study, distribution, marketing, and  
28 sale of chlorinated solvents. Through these trade associations and the distributor defendants,

1 the manufacturer defendants exercised complete and direct control over the study, distribution,  
2 marketing, and sale of chlorinated solvents, and these trade associations and distributor  
3 defendants acted as agents of the manufacturer defendants in studying, distributing, marketing,  
4 and selling of chlorinated solvents. Through these trade associations and distributor  
5 defendants, the manufacturer defendants knew of the toxicity and health and safety hazards  
6 associated with chlorinated solvents and gave instructions and advice regarding the disposal of  
7 chlorinated solvents that caused the release of chlorinated solvents into the environment. The  
8 manufacturer defendants organized and created these trade association and distributor  
9 defendants with the intent of shielding themselves from liability associated with their  
10 knowledge and control over chlorinated solvent products and the associated releases of  
11 chlorinated solvents.

12 34. The manufacturer, distributor, and chlorinated solvent equipment manufacturer  
13 defendants also: (1) encouraged dry cleaners to use chlorinated solvents without adequate  
14 warnings; (2) agreed through trade associations to attack any regulation of chlorinated  
15 solvents; and (3) promoted the unsafe and improper disposal of chlorinated solvents in order  
16 to reduce the costs of its use and to increase the market share of chlorinated solvents over other  
17 competing dry cleaning substances.

18 **III. CONTAMINATION OF THE PROPERTY LOCATED AT AND**  
19 **SURROUNDING 1700 MCHENRY AVENUE, MODESTO, CALIFORNIA.**

20 35. As a direct result of the defendants' acts alleged in this Complaint, the sewer  
21 lateral, soil, and property located at and surrounding 1700 McHenry Avenue, Modesto,  
22 California, have been contaminated, and will continue to be contaminated, with chlorinated  
23 solvents which create a public health hazard unless abated. As a direct and proximate result  
24 thereof, McHenry Modesto initiated a remedial program to assess, evaluate, investigate,  
25 monitor, remove, clean up, correct, and abate chlorinated solvent contamination and to restore  
26 plaintiffs' property and the McHenry Modesto property at significant expense, loss, and  
27 damage. Costs incurred within the past three (3) years of the filing of the Complaint, or that  
28 are to be incurred in the future, include: loss of use of property, property damage, restoration

1 costs incurred within the past three (3) years of the filing of the Complaint or that are to be  
2 incurred in the future, delay damages, property devaluation, interim and permanent remedial  
3 measures to control releases and potential releases of chlorinated solvents, cleanup costs,  
4 potential installation and maintenance of interceptor wells, and water treatment facilities, all in  
5 an amount in the many millions of dollars.

6 **FIRST CAUSE OF ACTION**

7 **(Indemnity Against All Defendants)**

8 36. Plaintiffs refer to paragraphs 1 through 35 above, and by this reference  
9 incorporates them herein as though set forth in full.

10 37. McHenry Modesto is the current owner of the property known as the McHenry  
11 Village Shopping Center, located at 1700 McHenry Avenue, Modesto, California. McHenry  
12 Modesto has expended in excess of \$1,000,000 to investigate and remediate chlorinated  
13 solvent contamination at and surrounding 1700 McHenry Avenue, Modesto, California.  
14 McHenry Modesto has engaged in extensive soil and groundwater remediation at the site,  
15 which includes City Water Well No. 21. Substantial sums will also be necessary in the future  
16 to continue and finalize remediation at and surrounding 1700 McHenry Avenue, Modesto,  
17 California, as directed by the Central Valley Regional Water Quality Control Board.

18 38. McHenry Modesto did not at any time buy, sell, distribute, use, possess, or  
19 provide PERC. McHenry's Modesto's liability arises solely from record ownership of 1700  
20 McHenry Avenue, Modesto, California. McHenry Modesto has sustained damages, as alleged  
21 herein, which were caused, entirely or in part, by the acts and omissions of defendants as set  
22 forth herein. McHenry Modesto's liability is based solely upon a derivative form of liability  
23 not resulting from McHenry Modesto's conduct, but only from an obligation imposed on  
24 McHenry Modesto by law; therefore, McHenry is entitled to complete indemnity from each  
25 defendant.

26 39. McHenry Modesto assigned to plaintiffs, without limitation, all claims, rights,  
27 and causes of action that McHenry Modesto has asserted or could assert with respect to PERC  
28 and/or its byproducts. Plaintiffs are now the owners and holders of all claims, rights, and



1 causes of action that McHenry Modesto has asserted or could assert with respect to PERC  
2 and/or its byproducts. Therefore, plaintiffs are entitled to complete indemnity from each  
3 defendant for the damages sustained by McHenry Modesto, including the sums expended by  
4 McHenry Modesto to investigate and remediate chlorinated solvent contamination at and  
5 surrounding 1700 McHenry Avenue, Modesto, California, and the sums which will be  
6 expended by McHenry Modesto in the future to continue and finalize remediation of the  
7 chlorinated solvent contamination at and surrounding 1700 McHenry Avenue, Modesto,  
8 California.

9  
10 **SECOND CAUSE OF ACTION**

11 **(Strict Liability Against All Defendants)**

12 40. Plaintiffs refer to paragraphs 1 through 39 above, and by this reference  
13 incorporates them herein as though set forth in full.

14 41. The manufacturer defendants, distributor defendants, and chlorinated solvent  
15 equipment manufacturers, and each of them, designed, manufactured, formulated, packaged,  
16 distributed, and/or sold products containing chlorinated solvents and/or equipment specifically  
17 designed to store, use, process, and dispose of chlorinated solvents.

18 42. The manufacturer defendants, distributor defendants, and chlorinated solvent  
19 equipment defendants, and each of them, represented, asserted, claimed, and warranted that  
20 chlorinated solvents and/or chlorinated solvent equipment could be used in conformity with  
21 accompanying instructions and labels in a manner which would not cause injury or damage.

22 43. The manufacturer defendants, distributor defendants, and chlorinated solvent  
23 equipment defendants, and each of them, knew, or should have known, that the chlorinated  
24 solvents and/or chlorinated solvent equipment would be used without inspection for defects,  
25 and if any inspection were performed, that the defects would not be discovered with the  
26 exercise of reasonable diligence.

27 44. These defendants, and each of them, designed, manufactured, formulated,  
28 packaged, distributed, applied, disposed of, and/or sold chlorinated solvents and/or the  
chlorinated solvent equipment. Defendants knew, or should have known, that exposure to



1 chlorinated solvents would create risk of harms to human health and contaminate sewer and  
2 water systems.

3 45. Chlorinated solvents are defective products because, among other things: (a)  
4 chlorinated solvents cause extensive groundwater contamination, even when used in their  
5 foreseeable and intended manner; (b) even at extremely low levels, chlorinated solvents render  
6 drinking water unfit for purveying to consumers and create a public health hazard whenever  
7 normal and necessary maintenance is performed on the sewer system, or otherwise adversely  
8 impacts normal use of the sewer and water system; (c) chlorinated solvents pose a significant  
9 threat to public health; (d) defendants failed to provide adequate warnings of the known and  
10 foreseeable risks of chlorinated solvents; and (e) defendants failed to conduct adequate  
11 scientific studies to evaluate the environmental fate and potential human health effects of  
12 chlorinated solvents.

13 46. At all relevant times the:

14 (a) chlorinated solvent equipment defendants were aware of the use of  
15 chlorinated solvents in the dry cleaning process or as cleaning solvents;

16 (b) defendant chlorinated solvent equipment manufacturers were aware of  
17 the typical waste and disposal practices resulting from the intended use of their equipment.  
18 Despite such knowledge, these defendants designed their equipment in such a manner that  
19 would result in spills, leaks, and/or discharge of chlorinated solvents during normal operations;

20 (c) defendants improperly designed their chlorinated solvent equipment by  
21 failing to provide appropriate mechanisms to prevent and/or catch releases or spills of  
22 chlorinated solvents and its by-products for such equipment;

23 (d) defendants failed to design proper mechanisms which would eliminate,  
24 prevent, and/or treat contamination arising from the dry cleaning process such as  
25 contamination from separator wastewater, spent filter cartridges, muck, and still bottoms;

26 (e) defendant chlorinated solvent equipment manufacturers knew, or should  
27 have known, of appropriate equipment redesigns, retrofits, and/or modifications to protect  
28 against environmental contamination associated with the use of such equipment. and

1 negligently and/or consciously disregarded this knowledge and failed to redesign, modify,  
2 and/or retrofit the subject equipment. Safer alternative designs and cleaning processes were  
3 scientifically feasible and economical;

4 (f) defendant manufacturers and distributors represented to the public and  
5 regulatory authorities that the products they sold would degrade into harmless substances and  
6 would not cause contamination. At the time said representations were made, said defendants  
7 knew, or should have known, these representations were false, misleading, and/or that there  
8 was no reasonable basis to believe that they were true; and

9 (g) when chlorinated solvents were applied and disposed of pursuant to the  
10 defendant manufacturers' recommended application and disposal procedures set forth in  
11 product brochures, trade group publications funded by defendants, seminars, meetings,  
12 advertisements, oral statements, and by other means, chlorinated solvents contaminated the  
13 sewer systems because of defendant manufacturers' failure to recommend adequate and proper  
14 safeguards to avoid or prevent contamination of the sewer system.

15 47. The chlorinated solvent equipment is a defective product because among other  
16 things: (1) the chlorinated solvent equipment causes extensive contamination, even when used  
17 in a foreseeable and intended manners; (2) at extremely low levels, chlorinated solvents  
18 contaminate sewer and water systems; (3) the use of chlorinated solvent equipment poses a  
19 significant threat to public health; (4) defendants failed to provide adequate warnings of the  
20 known and foreseeable risk of the use of chlorinated solvent equipment; and (5) defendants  
21 failed to conduct adequate scientific studies to evaluate the environmental fate and potential  
22 human health effects of the use of chlorinated solvent equipment.

23 48. The above-described defects in chlorinated solvents and chlorinated solvent  
24 equipment existed when the chlorinated solvents and chlorinated solvent equipment left the  
25 defendants' possession. The chlorinated solvents and chlorinated solvent equipment were used  
26 in a manner in which they were foreseeably intended to be used.

27 49. As a proximate and direct result of the defects alleged herein, the defendant  
28 manufacturers, distributors, and chlorinated solvent equipment manufacturers, and each of

1 them, contaminated the property located at and surrounding 1700 McHenry Avenue, Modesto,  
2 California, damages in an amount within the jurisdiction of this court.

3 50. As a further direct and proximate result of the acts and omissions of the  
4 defendants alleged herein, McHenry Modesto has been damaged because it has been required  
5 to obtain, and will require, the services of engineers, hydrogeologists, contractors, and other  
6 professionals to investigate and remedy the contamination problem.

7 51. Plaintiffs are informed and believe and thereon allege that as a further direct and  
8 proximate result of the acts and omissions of the defendants alleged herein, McHenry Modesto  
9 has sustained increased expenses and loss of use of the property, damages in an amount within  
10 the jurisdiction of this court. Plaintiffs are also entitled to costs and prejudgment interest to the  
11 full extent permitted by law.

12 52. The manufacturer, distributor, and chlorinated solvent equipment defendants  
13 knew that it was substantially certain that their alleged acts and omissions described above  
14 would cause serious injury and property damage, including the contamination of the sewer and  
15 water system with chlorinated solvents. Defendants committed each of the above-described  
16 acts and omissions knowingly, willfully, and with oppression, fraud, and/or malice and with  
17 conscious disregard of the health and safety of others in at least the following respects:

18 (a) Defendants knew chlorinated solvents would contaminate the sewer  
19 system, groundwater, and public drinking water supplies. Nonetheless, defendants instructed  
20 chlorinated solvents users to dispose of chlorinated solvents into public sewers or onto the  
21 ground with conscious disregard of the public health and safety.

22 (b) Although defendants knew that chlorinated solvents were human  
23 carcinogens and that chlorinated solvent equipment habitually leaked chlorinated solvents into  
24 the environment, causing property damage, defendants individually and through trade  
25 associations sought to suppress unfavorable publicity regarding chlorinated solvents,  
26 manufactured and funded favorable scientific studies knowing they were biased and/or  
27 meritless, and suppressed information regarding the hazards of chlorinated solvents from  
28 regulators, all for the sake of profit.

1       53. This conduct is reprehensible, despicable, and was performed with the intent to  
2 induce reliance by a class of persons including their customers, the public, regulatory agencies,  
3 plaintiffs, and McHenry Modesto on false representations, and to promote sales of chlorinated  
4 solvents and chlorinated solvent equipment in conscious disregard of the known risks of injury  
5 to health and property. Defendants acted with willful and conscious disregard of the probable  
6 dangerous consequences of that conduct and its foreseeable impact upon McHenry Modesto.  
7 Therefore, on behalf of McHenry Modesto, plaintiffs request an award of punitive damages in  
8 an amount to punish defendants.

9                                   **THIRD CAUSE OF ACTION**

10                               **(Continuing Trespass Against All Defendants)**

11       54. Plaintiffs reallege paragraphs 1 through 53, inclusive, of this complaint and  
12 incorporate them herein by reference.

13       55. Plaintiffs are the owners and/or actual possessors of the sewer and water  
14 system.

15       56. McHenry Modesto is the owner of the property located at 1700 McHenry  
16 Avenue, Modesto, California, and has assigned to plaintiffs all claims, rights, and causes of  
17 action that McHenry Modesto has asserted or could assert with respect to PERC and/or its  
18 byproducts.

19       57. The defendants so negligently, recklessly, and/or intentionally failed to properly  
20 control, apply, use, and/or dispose of chlorinated solvents that they directly and proximately  
21 caused chlorinated solvents to contaminate the property located at and surrounding 1700  
22 McHenry Avenue, Modesto, California, as follows:

23               (a) The defendants participated in the use and disposal of chlorinated  
24 solvents by intentionally, recklessly, and/or negligently controlling the use and disposal (and  
25 providing instructions for the disposal) of chlorinated solvents by dry cleaning stores;  
26 intentionally, recklessly, and/or negligently instructing dry cleaners about the purportedly  
27 proper disposal methods for chlorinated solvents; and intentionally, recklessly, and/or  
28 negligently calibrating, designing, and manufacturing customers' chlorinated solvent

1 equipment in such a manner that chlorinated solvents were routinely disposed of into the  
2 property at and surrounding 1700 McHenry Avenue, Modesto, California, on an ordinary basis.  
3 As a result of this activity, chlorinated solvents contaminated the sewer lateral to and property  
4 at and surrounding 1700 McHenry Avenue, Modesto, California.

5 (b) Defendant manufacturers, distributors, and chlorinated solvent  
6 equipment manufacturers intentionally, recklessly, and/or negligently instructed end-users,  
7 including retail dry cleaners, about the disposal of chlorinated solvents through informational  
8 brochures, instructional seminars, trade organization brochures funded, published, and  
9 distributed by defendants, product labels, and other literature. Said defendants recommended  
10 that chlorinated solvents be dumped into the sewer system and/or dumped on the ground,  
11 notwithstanding that said defendants knew, or should have known, that chlorinated solvents  
12 would contaminate the water and soil and pose a risk to health. As a result, when chlorinated  
13 solvents were disposed of pursuant to the techniques recommended by said defendants, the  
14 chlorinated solvents contaminated the property at and surrounding 1700 McHenry Avenue,  
15 Modesto, California. In addition, the chlorinated solvent equipment manufacturers designed  
16 their equipment to directly discharge chlorinated solvent waste into the sewer and/or instructed  
17 machine users to dispose of chlorinated solvent waste into the sewer.

18 (c) During this time, defendant manufacturers, distributors, and chlorinated  
19 solvent equipment manufacturers: (1) knew and/or reasonably should have known that  
20 chlorinated solvents had caused environmental contamination; and (2) had not conducted  
21 adequate testing to determine the environmental fate and potential human health effects of  
22 chlorinated solvents. Even though said defendants had sufficient information to determine that  
23 chlorinated solvents posed a threat to the environment, they did not modify their chlorinated  
24 solvent disposal instructions or provide appropriate advice, instruction, or information to their  
25 customers regarding proper disposal and use needed to avoid environmental contamination.

26 (d) Each of the defendants knew, or should have known, to avoid cleaning  
27 or rinsing empty chlorinated solvent containers and chlorinated solvent equipment residue and  
28

1 muck into sewers and/or soil. These defendants knew, or should have known, that this practice  
2 resulted in contamination. Despite these facts, defendants continued these negligent practices.

3 (e) Defendants knew, or should have known, that chlorinated solvents were  
4 persistent, and that chlorinated solvents could contaminate soil and groundwater.

5 58. The chlorinated solvent manufacturer defendants, the distributor defendants,  
6 and the chlorinated solvent equipment manufacturer defendants were each a substantial factor  
7 in bringing about the resulting contamination of plaintiffs' and McHenry Modesto's possessory  
8 interests, and each of the defendants aided and abetted the continuing trespasses and are jointly  
9 responsible for the injuries and damages as alleged in this Complaint and based on the  
10 following alleged conduct:

11 (a) The chlorinated solvent equipment manufacturers manufactured,  
12 designed, distributed, prepared, and installed dry cleaning equipment and/or parts which  
13 defendants knew, or should have known, would directly discharge and leak toxic PERC into  
14 the sewer system and ground, and intrude upon, contaminate, and damage property, including  
15 the property at and surrounding 1700 McHenry Avenue, Modesto, California;

16 (b) The chlorinated solvent manufacturers, the distributor defendants, and  
17 the chlorinated solvent equipment manufacturer defendants intentionally caused Modesto dry  
18 cleaners, including the Ideal Cleaners located at and adjacent to 1700 McHenry Avenue,  
19 Modesto, California, to dispose of the toxic chlorinated solvent waste by instructing,  
20 requesting, and/or inducing Modesto dry cleaners, including the Ideal Cleaners located at and  
21 adjacent to 1700 McHenry Avenue, Modesto, California, to dump chlorinated solvent waste  
22 onto the ground, or discharge chlorinated solvent waste directly into the sewer system, or pour  
23 chlorinated solvent waste down the drain, which caused the toxic chlorinated solvent waste to  
24 intrude upon the property located at and surrounding 1700 McHenry Avenue and cause the  
25 alleged harm and damage; and

26 (c) At the time, the chlorinated solvent manufacturers, the distributor  
27 defendants, and the chlorinated equipment manufacturer defendants intentionally instructed,  
28 requested, and/or induced the alleged tortious conduct by retailer Modesto dry cleaners,



1 including the Ideal Cleaners located at and adjacent to 1700 McHenry Avenue, Modesto,  
2 California, the chlorinated solvent manufacturer defendants, the distributor defendants, and the  
3 chlorinated solvent equipment manufacturer defendants knew, or should have known, of the  
4 conditions under which the delicts were to be done, the toxicity of the chlorinated solvent  
5 waste, and the consequences of the acts. These defendants instructed, requested, and/or  
6 induced the delicts and were a substantial factor in causing the resulting contamination of the  
7 property located at and surrounding 1700 McHenry Avenue, Modesto, California, and further  
8 aided and abetted the delicts, and are jointly liable with respect to the injuries and damages  
9 sustained. Plaintiffs, on behalf of McHenry Modesto, also seek punitive damages against the  
10 defendants.

11 59. The chlorinated solvent contamination of the sewer and water system,  
12 plaintiffs' property, and the property located at and surrounding 1700 McHenry Avenue,  
13 Modesto, California, has varied over time and can be reasonably abated. McHenry Modesto  
14 has engaged, and will continue to engage, in abatement programs.

15 **FOURTH CAUSE OF ACTION**

16 **(Continuing Nuisance Against All Defendants)**

17 60. Plaintiffs reallege paragraphs 1 through 59 of this complaint and incorporate  
18 them herein by reference.

19 61. The negligent, reckless, intentional, and ultrahazardous activity of the  
20 defendants, and each of them, has resulted in the contamination of the property located at and  
21 surrounding 1700 McHenry Avenue, Modesto, California, plaintiffs' property, and plaintiffs'  
22 sewer and water system, and constitutes a continuing nuisance within the meaning of Civil  
23 Code section 3479. The chlorinated solvent contamination has varied over time and can be  
24 reasonably abated. McHenry Modesto has engaged, and will continue to engage, in abatement  
25 programs.

26 62. Since plaintiffs have rights to the causes of action stated herein from McHenry  
27 Modesto, a property owner adversely affected by the nuisance, it is a private nuisance within  
28 the meaning of Civil Code section 3481.



1 63. As a direct and proximate result of the nuisance, McHenry Modesto has been  
2 damaged. On behalf of McHenry Modesto, plaintiffs are entitled to the compensatory damages  
3 alleged herein, and seek punitive damages against the defendants.

4 **WHEREFORE**, plaintiffs request judgment against defendants, and each of them, for:

- 5 1. Compensatory damages, according to proof;
- 6 2. Punitive damages against the chlorinated solvent manufacturer defendants,  
7 distributor defendants, and chlorinated solvent equipment manufacturer defendants, in an  
8 amount sufficient to punish and to deter said defendants from ever committing the same or  
9 similar acts;
- 10 3. For relief and order of abatement or enjoinder of nuisance as set forth in the  
11 fourth cause of action herein;
- 12 4. For litigation costs, including attorneys' fees;
- 13 5. For costs of suit incurred herein, and prejudgment interest to the full extent  
14 permitted by law; and
- 15 6. For such other and further relief as the court may deem just and proper.

16 Dated: December 22, 2005

**MILLER, AXLINE & SAWYER**  
A Professional Corporation

17  
18 By: 

**DUANE C. MILLER**  
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of Modesto Sewer District No. 1